



**[Billing Code: 6750 - 01S]**

## **FEDERAL TRADE COMMISSION**

**16 CFR Part 310**

**RIN 3084-AB19**

### **Telemarketing Sales Rule; Notice of Termination of Caller ID Rulemaking**

**AGENCY:** Federal Trade Commission (“Commission” or “FTC”).

**ACTION:** Notification.

**SUMMARY:** After reviewing the public comments elicited by an Advance Notice of Proposed Rulemaking (“ANPR”) seeking suggestions on ways to enhance the effectiveness and enforceability of the caller identification (“Caller ID”) requirements of the Telemarketing Sales Rule (“TSR”), as well as technical presentations at the FTC’s 2012 Robocall Summit, the Commission has determined that amending the TSR would not reduce the incidence of the falsification, or “spoofing,” of Caller ID information in telemarketing calls. Accordingly, the Commission is closing this proceeding.

**DATES:** This action is effective on December 5, 2013.

**ADDRESSES:** Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Craig Tregillus, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H-286, 600 Pennsylvania Ave. N.W., Washington, DC 20580, (202) 326-2970.

**SUPPLEMENTARY INFORMATION:** When the Commission amended the TSR in 2003, it added a requirement that telemarketers transmit identifying information to Caller ID services.<sup>1</sup> Violations of this provision can lead to civil penalties of up to \$16,000 per violation, in the case of unlawful conduct that has ended, or \$16,000 per day, in the case of ongoing violations.<sup>2</sup> The Commission explained that it added this prohibition to (1) promote consumer privacy by enabling consumers to know who is calling them at home; (2) encourage industry accountability and help legitimate businesses distinguish themselves from deceptive ones; and (3) assist law enforcement in identifying TSR violators.<sup>3</sup> The use of Caller ID information, however, has changed since 2003 with the growing availability of technologies that allow callers to alter or “spoof” the number and name that appear on the recipient’s Caller ID display.<sup>4</sup>

On December 15, 2010, the Commission issued an ANPR requesting public comment on whether the TSR should be amended to help effectuate the objectives of the Rule’s Caller ID provisions, including, in particular, enabling consumers and law enforcement to use Caller ID

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<sup>1</sup> Telemarketing Sales Rule, Statement of Basis and Purpose and Final Amended Rule, 68 FR 4580, 4672 (Jan. 29, 2003) (then codified at 16 CFR 310.4(a)(7), now at 16 CFR 310.4(a)(8)).

<sup>2</sup> See 15 USC 45(m)(1)(A); *see also* Federal Trade Commission Civil Penalty Adjustments, 74 FR 857 (Jan. 9, 2009). In addition, the Truth in Caller ID Act of 2009 makes it unlawful “to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value” and provides criminal penalties and forfeitures for violations. 111 Pub. Law. 331, 124 Stat. 3572, *codified at* 47 USC 227(e). The Federal Communications Commission enforces that statute, and has issued implementing regulations. See 76 FR 43196, 43203-06 (July 20, 2011). Further, a number of states have enacted anti-spoofing laws. See Office of the Minnesota Attorney Gen., Comment No. 00053, at 3, n.7 (citing Minn. Stat. § 325E.312; Fla. Stat. § 817.487; 815 Ill. Comp. Stat. § 517/10; La. Rev. Stat. Ann. § 51:1741.4; Miss. Code Ann. § 77-3-805; Ok. Stat. Ann. § 776.23).

<sup>3</sup> 68 FR at 4627.

<sup>4</sup> See S. Rept. 96, 111th Cong., 1st Sess. 1-2 (2009); Hearing before the House Subcomm. on Telecomm. and the Internet, Truth in Caller ID Act, 110th Cong., 1st Sess. Ser. No. 110–8, 9–10 (2007) (test. of Kris Monteith); H. Sengar, D. Wijesekera, S. Jojodia, Authentication and Integrity in Telecommunication Signaling Network, *Proceedings of the 12th IEEE Int’l Conf. and Workshops on the Eng’g of Computer-Based Systems* (2005).

information to identify entities responsible for illegal telemarketing practices.<sup>5</sup> The Commission received public comments from 51 different individuals and entities in response to the ANPR.<sup>6</sup> Of these, 28 came from consumers, one from a state attorney general,<sup>7</sup> and the remainder from a standards organization,<sup>8</sup> attorneys,<sup>9</sup> trade associations,<sup>10</sup> telemarketers,<sup>11</sup> and telecommunications carriers<sup>12</sup> and their service providers.<sup>13</sup>

The consumer comments generally favored any TSR revision that would make Caller ID services more accurate to help in identifying and halting unwanted telemarketing calls.<sup>14</sup> The business and trade association comments largely opposed any modifications,<sup>15</sup> arguing that additional restrictions would only burden legitimate businesses, and do nothing to halt Caller ID

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<sup>5</sup> 75 FR 78179 (Dec. 15, 2010).

<sup>6</sup> The comments are available online at [www.ftc.gov/os/comments/tsrcalleridnprm/index.shtm](http://www.ftc.gov/os/comments/tsrcalleridnprm/index.shtm) and are identified here by the commenter's name and the comment number. One comment was blank (Errickson, No. 00041), one was entered twice (AT&T Servs., Inc., Nos. 00040, 00057), and one added an addendum reiterating a prior comment (Smith, Nos. 00021, 00024).

<sup>7</sup> Office of the Minn. Atty. Gen., No. 00053.

<sup>8</sup> Alliance for Telecomm. Indus. Solutions, No. 00048.

<sup>9</sup> Copilevitz & Canter, LLC, No. 00036; Heyman Law Office, No. 00038.

<sup>10</sup> *E.g.*, ACA Int'l, No. 00042; American Teleservices Ass'n, No. 00050; Direct Mktg. Ass'n, No. 00051.

<sup>11</sup> *E.g.*, InfoCision Mgmt. Corp., No. 00052; MDS Commc'ns, No. 00046; Soundbite Commc'ns, No. 00056.

<sup>12</sup> AT&T Servs., Inc. No., 00040; NobelBiz, Inc., No. 00043; Verizon and Verizon Wireless, No. 00044.

<sup>13</sup> *E.g.*, Bent, 00045; Martino, No. 00022; Omega Servs., LLC, No. 00054.

<sup>14</sup> *E.g.*, Bensor, No. 00016; Grout, No. 00034; Herrera, No. 00025; Michael, No. 00017; Smith, 00020. A few consumers advocated making Caller ID spoofing a criminal offense, which the Commission lacks the statutory authority to do. *E.g.*, Fox, No. 00027; Messer, No. 00018; Shields, No. 00029.

<sup>15</sup> *E.g.*, American Teleservices Ass'n, No. 00050, at 5; AT&T Servs., Inc., No. 00040, at 3-4; Verizon and Verizon Wireless, No. 00044, at 3-4. Some of the comments supported proposals to give sellers and telemarketers greater flexibility in choosing what may appear in Caller ID name displays, such as authorization to use well-known product names. *See, e.g.*, Teleperformance USA, No. 00037. These proposals may be raised by commenters in the forthcoming review of the TSR. *See* 78 FR 30798, 30799 (May 23, 2013) (noting intent to undertake scheduled ten-year review of TSR).

spoofing. Both consumer and business comments noted the harm each has incurred when spoofing has caused their telephone numbers to appear on consumers' Caller ID displays, subjecting them to consumer complaints and the loss of business goodwill.<sup>16</sup>

None of the comments submitted in response to the ANPR suggested that any additions or modifications to the TSR could reduce the incidence of Caller ID spoofing. In fact, as previously indicated, Caller ID alteration unquestionably violates the prohibition added to the TSR in 2003 that bars telemarketers from “failing to transmit . . . the telephone number and . . . the name of the telemarketer to any caller identification service in use by a recipient of a telemarketing call.”<sup>17</sup> By definition, a spoofed telephone number is not the number of the telemarketer, and the Commission can rely on this prohibition to bring an enforcement action for violation of the TSR against a telemarketer that uses a spoofed number.

Moreover, any modification of the TSR likely would be circumvented by those intent on falsifying Caller ID information without detection because there is no apparent technical solution to the problem that is likely to be implemented in the near term. The comments in response to the ANPR and in presentations at the FTC's 2012 Robocall Summit<sup>18</sup> demonstrate that, as one commenter put it, “it is not technically feasible, by looking at the signaling data . . . to distinguish between a CPN [calling party number] that has been manipulated and one that has

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<sup>16</sup> Direct Mktg. Ass'n, No. 00051; Booth, No. 00031; Messer, No. 00018; Minn. Atty. Gen., No. 00053, at 2; Publishers Clearing House, No. 00049, at 1; Quicken Loans, No. 00058, at 2.

<sup>17</sup> *See supra* note 1.

<sup>18</sup> The FTC 2012 Robocall Summit, convened with the goal of developing solutions to the rapid rise in illegal robocalls, included an update on the current state of robocall technology, a discussion of the laws surrounding the use of robocalls, and an exploration of potential technological solutions to the problem of illegal robocalls (including panels on caller-ID spoofing and call authentication technology, data mining and anomaly detection, and call-blocking technology).

not.”<sup>19</sup> This is because the telephone network originally was designed to transmit only basic information, including the CPN and name used for billing.<sup>20</sup> Although CPN once sufficed to establish the identity of a caller, this is no longer the case. With the advent of such newer technologies as Voice over Internet Protocol (“VoIP”) and programmable autodialers that allow manipulation (and falsification) of the CPN, CPN can no longer function to authenticate the source of all calls.<sup>21</sup> Thus, until future modifications to the telephone signaling system provide a more reliable authentication mechanism, prohibitions in the Caller ID provisions of the TSR can be technically evaded.<sup>22</sup> Violators using spoofed numbers and names are difficult to track down and identify, and some are based in foreign countries to further complicate law enforcement by U.S. authorities.

Notwithstanding the likely persistence of the problem of Caller ID spoofing, market initiatives are underway to commercialize innovative new technologies that offer promise for curtailing the number of unwanted robocalls that consumers receive.<sup>23</sup> These technologies rely

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<sup>19</sup> AT&T Servs., Inc., No. 00040, at 2. Adam Panagia, the Director of AT&T’s Network Fraud Investigation Team made the same point at the Robocall Summit. *See* FTC Summit, *Robocalls: All the Rage* (Oct. 18, 2012), *Tr.* at 127, available at <http://www.ftc.gov/bcp/workshops/robocalls/docs/RobocallSummitTranscript.pdf>.

<sup>20</sup> *See generally*, FTC Robocall Summit, *Tr.* at 12-17 (Steve Bellovin, FTC Chief Technologist) (recounting the history of the development of the telephone and signaling systems).

<sup>21</sup> *Id.* at 21-26, 121-25 (Henning Schulzrinne, Federal Communications Commission Chief Technology Officer).

<sup>22</sup> The record indicates that at least one technical proposal has been advanced that might be able to solve the authentication problem, *see* Bent, No. 00045, but it appears that this or any other technical solution to Caller ID spoofing will not be available in the near term and would require modification of the current signaling system and likely action by the Federal Communications Commission. *See Stopping Fraudulent Robocall Scams: Can More Be Done?* Hearing Before the Subcomm. on Consumer Prot., Prod. Safety, and Ins. of the S. Comm. on Commerce, Sci. and Transp. (July 10, 2013) at 21, n.74 (Prepared Statement of the Federal Trade Commission) available at [http://ftc.gov/os/testimony/113hearings/130710\\_robocallstatement.pdf](http://ftc.gov/os/testimony/113hearings/130710_robocallstatement.pdf) (outlining the technical work to be done in the “coming months and years”).

<sup>23</sup> *See, e.g.*, Herb Weisbaum, *Why aren't phone companies doing more to block robocalls?*, NBC News, July 17, 2013, [www.nbcnews.com/business/why-arent-phone-companies-doing-more-block-robocalls-6C10641251](http://www.nbcnews.com/business/why-arent-phone-companies-doing-more-block-robocalls-6C10641251); [www.nomorobo.com](http://www.nomorobo.com) (announcing the availability of Robocall Challenge winner Aaron Foss’ free Nomorobo filter as of September 30, 2013).

on call filtering systems to help screen out unwanted robocalls, including those placed by telemarketers attempting to hide behind spoofed telephone numbers. The FTC's Robocall Challenge was designed to help address unwanted robocalls by spurring innovation in the marketplace.<sup>24</sup>

While the Commission has concluded that modification of the existing Caller ID requirements of the TSR would not serve any useful purpose at this time, it remains fully committed to combatting illegal telemarketing and Caller ID spoofing. In addition to the recent Robocall Challenge and Robocall Summit,<sup>25</sup> the Commission will continue to vigorously enforce the TSR, including its prohibition on spoofing, and the 2009 rule amendments that prohibit the vast majority of robocalls.<sup>26</sup> Since the creation of the national Do Not Call Registry in 2003, the FTC has brought 110 cases alleging Do Not Call privacy violations against 320 companies and 263 individuals. The 86 cases that have concluded thus far have resulted in orders totaling over \$126 million in civil penalties and \$793 million in restitution or disgorgement. Under the 2009

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<sup>24</sup> FTC Press Release, *FTC Announces Robocall Challenge Winners* (Apr. 2, 2013), available at <http://www.ftc.gov/opa/2013/04/robocall.shtm>.

<sup>25</sup> See note 18, *supra*.

<sup>26</sup> See Telemarketing Sales Rule, Final Rule Amendments, 73 FR 51164 (Aug. 29, 2008). The amendments, codified at 16 CFR 310.4(b)(1)(v), prohibit prerecorded message calls without a consumer's prior written agreement to receive them, and require that such messages tell consumers at the outset of the message how to activate an automated interactive opt-out mechanism that will place them on the marketer's do-not-call list and terminate the call. The Federal Communications Commission has since adopted corresponding requirements that took effect on October 16, 2013. See Telephone Consumer Protection Act of 1991, Final Rule, 77 FR 34233 (June 11, 2012), Telephone Consumer Protection Act of 1991, Final Rule and Announcement of Effective Date, 77 FR 63240 (Oct. 16, 2012).

amendments, the FTC has brought 34 robocall cases against 103 companies and 80 individuals,<sup>27</sup> including a number of cases that have alleged TSR Caller ID spoofing violations.<sup>28</sup> As technology changes, the Commission will continue to evaluate if and when amending the TSR to

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<sup>27</sup> These cases include five actions against telemarketers that placed robocalls from “Rachel” at “Card Services.”

*FTC v. WV Univ. Mgmt., LLC*, Civ. No. 6:12-1618 (M.D. Fla. filed Oct. 29, 2012); *FTC v. A+ Fin. Ctr., LLC*, Civ.

No. 2:12-14373 (S.D. Fla. filed Oct. 23, 2012); *FTC v. The Greensavers, LLC*, Civ. No. 6:12-1588 (M.D. Fla. filed

Oct. 22, 2012); *FTC v. Ambrosia Web Design, LLC*, Civ. No. 2:12-2248 (D. Ariz. filed Oct. 22, 2012); *FTC v. ELH*

*Consulting, LLC*, Civ. No. 12-2246 (D. Ariz. filed Oct. 22, 2012); *see also* Press Release, *FTC Leads Joint Law*

*Enforcement Effort Against Companies That Allegedly Made Deceptive “Cardholder Services” Robocalls* (Nov. 1, 2012), available at <http://www.ftc.gov/opa/2012/11/robocalls.shtm>.

<sup>28</sup> *E.g.*, *FTC v. The Cuban Exchange, Inc.*, Civ. No. 12-5890 (E.D.N.Y. filed Nov. 28, 2012); *FTC v. A+ Fin. Ctr.*,

*LLC*, Civ. No. 12-1437 (S.D. Fla. filed Oct. 23, 2012); *FTC v. Nelson Gamble & Assocs.*, Civ. No. SACV12-1504

(C.D. Cal. filed Sept. 10, 2012); *U.S. v. JGRD, Inc.*, Civ. No. 12-0945 (E.D. Pa. filed Feb. 23, 2012); *U.S. v. Cox*,

Civ. No. SACV 11-1910, (C.D. Cal. filed Dec. 12, 2011); *U.S. v. Sonkei Commc’ns., Inc.*, Civ. No. SACV11-1777

(C.D. Cal. filed Nov. 17, 2011); *U.S. v. Feature Films for Families, Inc.*, Civ. No. 4:11-0019 (N.D. Fla. filed May 5, 2011); *U.S. v. The Talbots, Inc.*, Civ. No. 1:10-10698, (D. Mass. filed Apr. 27, 2010).

specifically address Caller ID spoofing would further assist in the Commission's enforcement efforts.

By direction of the Commission.

Donald S. Clark,  
Secretary.

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